

Claim 1 is directed to a system as follows:

1. A system that evaluates body activity relative to an environment, said system comprising a processor that is associable with a sensor for sensing dynamic and static accelerative phenomena of said body, said processor operable to process said sensed dynamic and static accelerative phenomena as a function of at least one accelerative event characteristic and an environmental representation to thereby determine whether said evaluated body activity is within environmental tolerance.

Claim 41 is directed to a system as follows:

41. A system that evaluates movement of a body relative to an environment, said system comprising:

a sensor, associable with said body, that senses accelerative phenomena of said body relative to a three dimensional frame of reference in said environment, said sensor comprising a plurality of acceleration measuring devices; and

a processor, associated with said sensor, that processes said sensed accelerative phenomena of said body as a function of at least one accelerative event characteristic to thereby determine whether said evaluated body movement is within environmental tolerance, and to thereby determine whether said body has experienced dynamic acceleration due to external forces by subtracting a value of gravitation acceleration from the total acceleration experienced by said body.

A restriction requirement must provide the particular factual basis for asserting that restriction is necessary:

The particular reasons relied on by the examiner for holding that the inventions as claimed are either independent or distinct should be concisely stated. A mere statement of conclusion is inadequate. The reasons upon which the conclusion is based should be given. (MPEP § 816, p. 800-56 (8th ed. rev. 1 February 2003)).

The Restriction Requirement fails to provide such a factual basis (as opposed to a “mere statement of conclusion”) indicating why the claims recite patentably distinct subcombinations – that is, a factual basis for asserting that: “Inventions I and II are related as subcombinations disclosed as usable together in a single combination.” The Applicants

respectfully submit that the invention as claimed in Claims 1-40 and the invention as claimed in Claims 41-73 are not subcombinations.

The system as claimed in Claim 1 senses accelerative phenomena in a sensor and processes the sensed accelerative phenomena in a processor. The processor of Claim 1 determines whether the body activity is within environmental tolerance.

Similarly, the system as claimed in Claim 41 senses accelerative phenomena in a sensor and processes the sensed accelerative phenomena in a processor. The processor of Claim 41 determines whether the body movement is within environmental tolerance.

Both the system as claimed in Claims 1-40 and the system as claimed in Claims 41-73 evaluate body movement relative to an environment using a sensor that senses accelerative phenomena and a processor that processes the sensed accelerative phenomena. Sensing dynamic and static accelerative phenomena, as claimed in Claims 1-40, does not provide separate utility from the system as claimed in Claims 41-73. Sensing accelerative phenomena of the body relative to a three dimensional frame of reference in the environment, as claimed in Claims 41-73, does not provide separate utility from the system claimed in Claims 1-40.

Therefore, the Applicants respectfully submit that it is clear that the Group I claims (Claims 1-40) and the Group II claims (Claims 41-73) are not related as subcombinations. Therefore, the Restriction Requirement accordingly has failed to establish that the system as claimed in the Group I claims and the system as claimed in the Group II claims are “subcombinations” usable together in a single combination.

With respect to the Group I claims (Claims 1–40) and the Group II claims (Claims 41–73), the Restriction Requirement fails to satisfy any of the requirements for restricting the claims of the patent application. Accordingly, the Applicants respectfully request that the Restriction Requirement be withdrawn.

SUMMARY

If any issue arises, or if the Examiner has any suggestions for expediting allowance of this application, the Applicants respectfully invite the Examiner to contact the undersigned at the telephone number indicated below or at *fhamilton@davismunck.com*.

The Commissioner is hereby authorized to charge any additional fees connected with this communication or credit any overpayment to Deposit Account No. 50-0208.

Respectfully submitted,

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